

1 **BEFORE THE OREGON PUBLIC UTILITIES COMMISSION**

2
3 **UE 178**

4
5 **In the Matters of OREGON PUBLIC**
6 **UTILITY COMMISSION STAFF**
7 **directing:**
8
9 **Portland General Electric Company**
10 **(PGE)**
11
12 **To file tariffs establishing automatic**
13 **adjustment clauses under the terms**
14 **of SB 408.**

STIPULATION
BY
KEN LEWIS and
UTILITY REFORM PROJECT

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17 This Stipulation is among Ken Lewis and the Utility Reform Project. It is
18 submitted pursuant to OAR 860-14-0085(1), which allows "some or all of the
19 parties" to "enter into a stipulation upon any matter in controversy, at any time
20 during the proceeding."

- 21 1. **SPECIFIC TERMS:** The Stipulating Parties agree that PGE shall not be
22 authorized to surcharge ratepayers for any of its alleged excess income tax
23 payments for the calendar year 2007.
- 24 2. **GENERAL TERMS.**
- 25 A. The Stipulating Parties agree that the Stipulation represents a
26 compromise of the positions of the parties for the purpose of this docket.
27 As such, conduct, statements and documents disclosed in the
28 negotiation of this Stipulation shall not be admissible as evidence in this
29 or any other proceeding.

- 1 B. If this Stipulation is challenged by any other party to this proceeding, or
2 any other party seeks a surcharge amount for PGE that departs from the
3 terms of this Stipulation, the Stipulating Parties reserve the right to
4 cross-examine witnesses and put in such evidence as they deem
5 appropriate to respond fully to the issues presented. Notwithstanding this
6 reservation of rights, the Stipulating Parties agree they will continue to
7 support the Commission's adoption of the terms of this Stipulation.
- 8 C. If the Commission rejects all or any material part of this Stipulation, or
9 adds any material condition to any final order that is not consistent with
10 this Stipulation, each Stipulating Party reserves the right to withdraw from
11 this Stipulation upon written notice to the Commission and the other
12 Stipulating Parties within five (5) business days of service of the final
13 order that rejects this Stipulation or adds such material condition.
- 14 D. By entering into this Stipulation, no Party shall be deemed to have
15 approved, admitted or consented to the facts, principles, methods or
16 theories employed by any other Party in arriving at the terms of this
17 Stipulation. Except as provided in this Stipulation, no Party shall be
18 deemed to have agreed to any provision of this Stipulation is appropriate
19 for resolving issues in any other proceeding.

1 E. This Stipulation may be signed in any number of counterparts, each of
2 which will be deemed an original for all purposes, but all of which taken
3 together will constitute one and the same agreement.

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5 EXPLANATORY BRIEF
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7 Pursuant to OAR 860-14-0085(4), the Stipulating Parties offer the following
8 explanatory brief.

9 One overwhelming reason for denying any surcharge is that PGE during 2007
10 earned significantly higher profits than its authorized rate of return on investment.
11 The PGE "OPUC REGULATORY REPORTING RESULTS OF OPERATIONS
12 January 2007 through December 2007" [hereinafter PGE 2007 Results of
13 Operations Report"], filed with the Commission on June 2 or 3, 2008, shows
14 "Regulated Adjusted Results" for 2007 produced a "Return on Equity" of 11.58%.
15 PGE 2007 Results of Operations Report, p. 1, col 5. This is higher than PGE's
16 10.1% authorized rate of return for 2007. The PGE 2007 Results of Operations
17 Report uses the rate order in UE 180 (OPUC Order No. 07-015) as establishing the
18 authorized rate of return applicable to 2007: 10.1%.

19 Another way of quantifying the 2007 overearning is that, under OPUC Order
20 No. 07-015 (App F, p. 1, col 5, line 23), PGE was authorized to earn \$143,306,000
21 in net operating revenues for 2007. In reality (under Regulated Adjusted Results for
22 2007), PGE earned \$180,224,000. The difference is earnings of \$36,918,000 for
23 2007 in excess of the level authorized by OPUC Order No. 07-015.

1 The Stipulating Parties agree that PGE should not be allowed any surcharge
2 for 2007 in this docket. When the circumstances were reversed during the last 3
3 months of 2005, PGE and Staff in UM 1224 both argued that PGE should not be
4 required to refund excess income tax collections (quantified by Staff at \$26.5 million
5 during those 3 months), because PGE's earnings during a 12-month earnings
6 review period (which included the 3 months) were below the authorized level. The
7 Commission has not issued an order resolving this issue in UM 1224.

8 If the lack of such earnings enables PGE to avoid making a refund of excess
9 income taxes charged to ratepayers, then an abundance of earnings should
10 likewise prevent PGE from surcharging ratepayers when income taxes paid
11 (allegedly) exceed the amount charged to ratepayers. Ratemaking which imposes
12 surcharges despite contemporaneous excess earnings, but does not require refunds
13 because of contemporaneous deficient earnings, results in

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unjust, unfair, unreasonable, and unlawful rates.

Dated: March 3, 2009

KEN LEWIS

DANIEL W. MEEK
OSB No. 79124
10949 S.W. 4th Avenue
Portland, OR 97219
503-293-9021 voice
503-293-9099 fax
dan@mEEK.net

for Utility Reform Project

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CERTIFICATE OF SERVICE

I hereby certify I FILED the foregoing STIPULATION BY KEN LEWIS and UTILITY REFORM PROJECT by e-mail upon the OPUC, followed by mail of the original and 8 copies this date to the Oregon Public Utility Commission, and further I certify that I served a copy by placing a true copy in a sealed envelope and deposited in the U.S. Postal Service at Portland, Oregon, with first class postage prepaid, to:

10 11 12 13 DOUGLAS C TINGEY PORTLAND GENERAL ELECTRIC 121 SW SALMON 1WTC13 PORTLAND OR 97204	MELINDA J DAVISON DAVISON VAN CLEVE PC 333 SW TAYLOR - STE 400 PORTLAND OR 97204
14 15 16 17 PGE Rates & Regulatory Affairs 121 SW Salmon 1WTC0702 Portland, OR 97204	
18 19 20 21 Linda K. Williams Attorney 10266 S.W. Lancaster Road Portland, OR 97219	JASON W JONES DEPARTMENT OF JUSTICE 1162 COURT ST NE SALEM OR 97301-4096

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23
24 I further emailed said document to the entire email service list as shown this day on
25 the OPUC web site:

26
27 pge.opuc.filings@pgn.com
28 gordon@oregoncub.org
29 bob@oregoncub.org
30 jason.w.jones@state.or.us
31 catriona@oregoncub.org
32 dan@meek.net
33 linda@lindawilliams.net
34 mail@dvclaw.com
35 dockets@oregoncub.org
36 doug.tingey@pgn.com
37

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39 Dated: March 3, 2009
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Daniel W. Meek